

## 20. BÖLÜM

### İlaçla Kolaylaştırılmış Suçlarda Kullanılan Maddeler

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İlaçla kolaylaştırma kavramı, maddenin bireye rızası olmadan ve cezai amaçlarla iradesini kontrol etmek veya davranışlarını değiştirmek için verilmesi olarak tanımlanabilir. Bu durumda verilen maddenin etkileri, mağdurun özgürce rıza gösterebileceği veya saldırganına karşı koyabileceği bir durumda olmasını engelleyebilmektedir. İlaçla kolaylaştırılan suçlar kapsamında olgular; insan ticareti mağdurları, hırsızlık, bakıcıları tarafından madde verilen çocuk, yaşlı ve engelliler ile sıklıkla cinsel saldırı mağdurlarından oluşmaktadır (1). Kişiyi etkisiz hale getiren madde, mağdura gizlice verilebilir veya mağdur, bu maddeleri sonuçlarını anlamadan gönüllü olarak alabilir (2). Bu maddeler bazı spor salonlarında, bar, disko ve kulüp gibi eğlence mekanları yanında internet üzerinden de temin edilebilmektedir (1).

Uyuşturucuyla kolaylaştırılmış suçların kurbanları genellikle bir miktar amnezi tanımlamaktadır ve birçoğu tüketilen alkol miktarına göre, olması gerektiğine inandıklarından çok daha fazla sarhoş olduklarını bildirmiştir. Bazıları ise bir suçun kurbanı olduğunu hatırlar. Diğerleri suçla ilgili doğrudan bir anıya sahip değildirler, ancak mağdur olabileceklerinden şüphelenirler. Bazılarının ise bir suçla ilgili ne anısı ne de şüphesi vardır, ancak daha sonra diğer davaların soruşturmalarında mağdur olarak ortaya çıkabilirler (3).

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findan; silahla veya birden fazla kişi tarafından birlikte; insanların toplu olarak bir arada yaşama zorunluluğunda bulunduğu ortamların sağladığı kolaylıktan faydalanmak suretiyle işlenmesi hâlinde, yukarıdaki fıkralara göre verilen cezalar yarı oranında artırılmaktadır. Cinsel saldırı için başvurulmuş cebir ve şiddetin kasten yaralama suçunun ağır neticelerine neden olması hâlinde, ayrıca kasten yaralama suçuna ilişkin hükümler uygulanır. Suç sonucu mağdurun bitkisel hayata girmesi veya ölümü hâlinde, ağırlaştırılmış müebbet hapis cezasına hükmolunur denilmektedir (110). İlaçla kolaylaştırılmış cinsel saldırı olguları saptandığında bu durumun kişinin özgür iradesini ortadan kaldıran bir unsur olması ve TCK'nda bu duruma ilişkin düzenleme olmaması nedeniyle TCK'nda cezayı ağırlaştırıcı unsur olarak yer alması gerektiği kanısındayız.

İlaçla kolaylaştırılmış suçlarda olgulara multidisipliner yaklaşım zorunlu olup şüphelenme ile başlayan süreçte toksikoloji laboratuvarlarında biyolojik materyalin seçimi, hazırlanması ve analiz sonuçlarının bilimsel yorumlanması büyük önem taşımaktadır. Bu konuda ülkemizde hukuksal bir düzenlemeye gereksinim olduğunun da altını çizmeliyiz. Adli yaklaşımla olguların niteliğini ortaya koymak kadar koruyucu ve önleyici tedbirlerin alınması da kaçınılmaz bir zorunluluk olarak ortaya çıkıyor. Birincil önleme, gençlerin cinsel ve sosyal eğitimi konusunda aile ve okuldaki eğitim sürecinin tümüne atıfta bulunulurken, ikincil önleme daha spesifik olarak olguların suçları yineleme ve pekiştirmelerini önlemeye yönelik olmalıdır. Toplumsal çok boyutlu bir eğitim yanında psikoloji, tıp, hukuk, kriminoloji, eğitim gibi alanlarda meslek profesyonellerini kapsayan çok disiplinli bir strateji belirlenmelidir. Eğitim kadınları olduğu kadar erkekleri de hedef almalıdır, böylece her ikisi de potansiyel savunmasızlıklarının yalnızca kurbanlar olarak değil, aynı zamanda olası saldırganlar olarak da farkına varmalarını sağlayabilecektir.

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